

Serial No. 10/726,963

PATENT

REMARKS

In the Final Office Action dated March 3, 2009, claims 1, 2, 5 to 7, 9, 17, 18 and 20 to 23 are pending of which claims 1, 2, 5 to 7, 9, 17, 18 and 20 to 23 are rejected.

In particular:

- Claims 1, 2, 5 and 9 are rejected under 35 USC 102(b) as being anticipated by Cox et al (US 5,824,040)
- Claim 6 is rejected under 35 USC 103(a) as being unpatentable over Cox et al (US 2002/0120327) in view of McNamara et al (US 6,004,347)
- Claim 7 is rejected under 35 USC 103(a) as being unpatentable over Cox et al (US US 2002/0120327) in view of McNamara et al (US 6,004,347)
- Claims 17, 18, 20, 22 and 23 are rejected under 35 USC 103(a) as being unpatentable over Cox et al (US US 2002/0120327) in view of Brown et al (US 5,769,887)
- Claim 21 is rejected under 35 USC 103(a) as being unpatentable over Cox et al (US US 2002/0120327) in view of Brown et al (US 5,769,887) and further in view of McNamara et al (US 6,004,347)

CLAIM AMENDMENTS

No claim amendments are made in this response.

DISCUSSION**Claim 1**

Claim 1 is rejected under 35 USC 102(b) as being anticipated by Cox et al (US 5,824,040)

The Examiner states that the reference Cox et al discloses a biocompatible

Serial No. 10/726,963

PATENT

graft material covering the inner surface of the stents thereby fulfilling the claimed "at least one of the stents having a bio-compatible graft material cover" and that the outer surface of the stents is uncovered thereby fulfilling the claimed "an uncovered stent portion". The Examiner has also questioned the use of the word "portion" as being able to include within its scope the inside and the outside of a stent as different portion of the assembly.

We submit that in both these interpretations the Examiner has distorted the natural meanings of the word to come up with his interpretations.

The natural meaning of the word "cover" is that something goes over something else. Claim 1 states;

"... at least one of the stents having a bio-compatible graft material cover ..." which clearly must be read that the stent has a cover over it and then if the reader of the claim has any doubt as to what this means the claim continues;

"... thereby defining a covered stent portion..."

This does not say that the stent covers the graft material, it says that the stent is covered by the graft material. There is no other reasonable interpretation and the interpretation by the Examiner is, with respect, clearly wrong.

In relation to the word "portion" we submit that reading the claim as a whole it is entirely clear that the interpretation of the Examiner is not correct.

Claim 1 defines :

"... a plurality of self expanding stents linked together by flexible links and defining an elongate substantially cylindrical lumen wall engaging surface ... defining a covered stent portion and an uncovered stent portion ..."

And then reinforces the correct interpretation by defining ;

"... wherein there are at least three covered stents of the plurality of stents in the covered stent portion and up to ten uncovered stents of the plurality of stents in the uncovered stent portion ...".

By reading the entire claim the Examiner can see that the portions being referred to

Serial No. 10/726,963

PATENT

are not inner and outer portions of the same stent but different ones of the plurality of stents along the length of the plurality of stents.

We submit that, contrary to the Examiners assertion that the terms are extremely broad, a reading of the claim as a whole enables the reader to understand the scope of the claim and to understand that this claim is not anticipated by the reference Cox et al.

For these reasons we submit that the reference Cox et al does not teach or suggest the combination of claimed features in Claim 1 and we therefore submit that Claim is not anticipated by Cox et al (US 5,824,040).

Claims 2, 5 and 9

Claims 2, 5 and 9 depend from a not anticipated Claim 1 and hence we submit that Claims 2, 5 and 9 are also not anticipated by Cox et al (US 2002/0120327).

Claim 6

Cox et al (US 2002/0120327) is a divisional of a continuation of Cox et al (US 5,824,040) and therefore has the same subject matter and for the same reasons as discussed in relation to Claim 1 we submit that Claim 6 is not taught or suggested by Cox et al (US 2002/0120327).

There is no teaching or suggestion in Cox et al (US 2002/0120327) of a plurality of linked stents with only some of those stents being covered (as correctly understood, as discussed above) and the rest being uncovered.

Claim 6 is, we submit, patentable over Cox et al (US 2002/0120327).

Claim 7

Claim 7 is rejected under 35 USC 103(a) as being unpatentable over Cox et al (US 2002/0120327) in view of McNamara et al (US 6,004,347).

Serial No. 10/726,963

PATENT

Claim 7 depends from a non-anticipated claim 1 as discussed above and hence we submit that Claim 7 is patentable. The deficiencies of the reference Cox et al as enumerated above are not taught or suggested by the reference McNamara et al. (US 5,824,040)

Claim 7 is, we submit, patentable over Cox et al (US 2002/0120327) in view of McNamara et al (US 6,004,347).

Claims 17, 18, 20, 22 and 23

Claims 17, 18, 20, 22 and 23 are rejected under 35 USC 103(a) as being unpatentable over Cox et al (US 2002/0120327) in view of Brown et al (US 5,769,887).

The deficiencies of the reference Cox et al as enumerated above are not taught or suggested by the reference Brown et al. The reference Brown et al does not teach or suggest a covered portion of a stent graft but merely a portion of graft material extending away from a balloon expandable stent.

The portion referred to as (12) in Figure 2 of Brown et al would not provide the clear clinical advantage of the claimed graft material covering self expanding stents because there would be no tendency for the graft material to seal against the wall of the aorta and close off a tear as discussed above and in the specification. As has been discussed in earlier responses the portion (13) of the device depicted Figure 2 of Brown et al would not provide the clear clinical advantage of the claimed linked uncovered stents to provide continuous pressure against the wall of a lumen after deployment.

The Examiner has also referred us to Figure 8 of Brown et al and in particular to the stent drawn in dotted and designated by reference numeral 31. The description in Brown et al column 6 lines 53 to 65 which states;

"Once deployed, the attachment of the graft to the anchoring member and the sealing of the graft to the patient's vessel may be improved by deploying a

Serial No. 10/726,963

PATENT

second anchoring member as illustrated in FIG. 8. Once the first stent 13 and attached graft 12 are deployed within a patient's vessel 30, a second anchoring member 31 without an attached graft is deployed coaxially within the stent 13 and graft 12. The second anchoring member overlaps the attachment between first stent 13 and graft 12 to sandwich the graft 12 against the vessel, further minimizing flow by. Preferably, the second anchoring member 31 is approximately two times the length of the first stent 13 and extends past the distal end of the first stent 13. "

clearly indicates that the stent 31 is not part of the first stent 13 and graft 12 assembly but is a separately deployed stent once the first stent 13 and graft 12 assembly have been deployed. Brown does not teach or suggest a device which has the claimed features of the present invention.

For these reasons we submit that Claims 17, 18, 20, 22 and 23 are patentable over Cox et al (US 2002/0120327) in view of Brown et al (US 5,769,887).

Claim 21

Claim 21 is rejected under 35 USC 103(a) as being unpatentable over Cox et al (US 2002/0120327) in view of Brown et al (US 5,769,887) and further in view of McNamara et al (US 6,004,347)

Claim 21 depends from a patentable claim 17 as discussed above and hence we submit that Claim 21 is patentable. The deficiencies of the references Cox et al and Brown et al as enumerated above are not taught or suggested by the reference McNamara et al.

Claim 21 is, we submit, patentable over Cox et al (US 2002/0120327) in view of Brown et al (US 5,769,887) and further in view of McNamara et al (US 6,004,347).

Summary

None of the cited references Cox et al (US 5,824,040), Cox et al (US

Serial No. 10/726,963

PATENT

2002/0120327), Brown et al (US 5,769,887) and McNamara et al (US 6,004,347) whether taken singly or in any allowable combination and giving the words of the claims their natural meanings anticipate, teach or suggest the claimed invention.

Overall we submit that all claims are not anticipated and are patentable over the cited references.

The re-examination and reconsideration of this application is respectfully requested and it is further requested that this application be passed to issue.

Although the foregoing discussion is believed to be dispositive of the issues in this case, applicants' attorney requests a telephone interview with the Examiner to further discuss any unresolved issues remaining after the Examiner's consideration of this amendment.

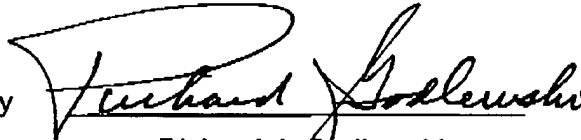
Respectfully submitted,

David Ernest Hartley
Ian Nixon
Peter John Mossop

Date:

April 21, 2009

By



Richard J. Godlewski
Reg. No. 30,056
(812) 330-1824